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AN ACT to Create a Workman's Compensation Fund and to Provide a Method of Compensation for Employes who May Be Injured, or the Dependents of Those Killed in the Course of their Employment from said Fund, to be raised and paid into the hands of the State Treasurer, as herein provided, and to define and fix the rights of employes and employers and to define the defenses that may be made by employers in actions for damages arising from death or personal injury of their employes, and to provide a method of raising said fund, and to create a Board of Commissioners to administer said fund and to define the rights, powers and duties of said Board of Commissioners.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. That a Board of Commissioners is hereby created to be known as "The Workmen's Compensation Board" to administer the funds for the compensation of injured workmen, and the dependents of killed workmen, as herein provided. Said Board shall consist of three members, who shall be the Attorney General, the Commissioner of Insurance, and the Commissioner of Agriculture, Labor and Statistics of the Commonwealth of Kentucky, who shall receive seventy-five dollars each, per month, payable out of the Compensation Fund.

§ 2. The Board shall keep and maintain in its main office in the City of Frankfort, Kentucky, and shall provide suitable rooms, necessary office furniture, supplies, books, periodicals, and maps for the same. All necessary expenses shall be audited and paid out of the Workmen's Compensation Fund created under this Act. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, on which shall be inserted the words: "Workmen's Compensation Board, State of Kentucky, Official Seal." The Board may hold ses-

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sions at any place within the State. Said Board shall have the power to sue and be sued.

§ 3. The Board shall elect one of its members President, and members shall receive the amount named in section one for their services. Their actual and necessary traveling expenses in the discharge of their duties shall be itemized and approved by the Board, and certified by the Auditor of Public Accounts, and shall be paid as now paid to other State officials. The Board shall elect a Secretary, who shall hold his office at the pleasure of the Board and who shall receive for his services an annual salary not to exceed Twenty-five Hundred Dollars, to be paid out of the Workmen's Compensation Fund created under this Act.

§ 4. The Board may employ actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants and fix their compensation. Such employment and compensation shall be first approved by the Governor, and shall be paid out of the Workmen's Compensation Fund created under this Act. The Secretary, actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants that may be employed shall be entitled to receive from the Workmen's Compensation Fund created under this Act their actual and necessary expenses while traveling on the business of the Board, and the members of the Board may confer with, and meet with, officers of other States and officers of the United States on matters pertaining to their official duties. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by said Board.

§ 5. The said Board shall meet every Monday for the transaction of all business, and when necessary, the Secretary shall call said Board together to consider and transact such business as may be before it. All proceedings of the Board shall be shown

on its records of proceedings, which shall be a public record and shall contain a record of each case considered and the award made, with respect thereto, and all voting shall be had by the calling of each member's name by the Secretary, and each vote shall be recorded as cast.

§ 6. A majority of the Board shall constitute a quorum for the transaction of business and vacancies shall not impair the right of the remaining members to exercise all the powers of the full Board, so long as a majority remains. Any investigation, inquiry or hearing which the Board is authorized to hold or undertake, may be held or undertaken by or before any one member of the Board. All investigations, inquiries, hearings and decisions of the Board, and every order made by a member thereof, when approved by a majority of the members and so shown on the record of its proceedings, shall be deemed to be the order of the Board.

§ 7. The Board shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notice and the service thereof, in case of accident and injury to employes, the nature and extent of the proof and evidence and the methods of taking and furnishing same, to establish the rights to benefits or compensation from the fund hereinafter provided for, the form of application of those claiming to be entitled to benefits or compensation therefrom; the methods of making physical examinations and inspections and prescribe the time within which adjudications and awards shall be made.

§ 8. Each member of the Board, the Secretary and every inspector or examiner appointed by the Board, shall, for the purpose contemplated by this Act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas and compel the attendance of witnesses and the production

of pertinent books, accounts, papers, records, documents and testimony.

§ 9. In the case of failure or refusal of any person to comply with the order of the commission or subpoena issued by it or one of its inspectors or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection, as aforesaid, the Circuit Judge of the county in which the person resides, on application of any member of the commission or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

§ 10. Each officer who serves a subpoena shall receive the same fees as a sheriff, and each witness who appears in obedience to a subpoena before the commission or inspector or examiner, or before the Board, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in circuit courts, which shall be audited and paid from the Workmen's Compensation Fund, in the same manner as other expenses are audited and paid upon the presentation of proper vouchers approved by any two members of the commission. No witness subpoenaed at the instance of a party other than the commission or an inspector, shall be entitled to compensation from the Workmen's Compensation Fund, unless the commission shall certify that his testimony was material to the matter investigated.

§ 11. In an investigation, the commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions to be used in the circuit court.

§ 12. A transcribed copy of the evidence and proceedings or any specific part thereof, on any investigation, taken by a stenographer appointed by

the commission, being certified and sworn to by said stenographer to be a true and correct transcript of the testimony in the investigation, or of a particular witness, or of a specific part thereof, or to be a correct transcript of the proceedings had on said investigation, so purporting to be taken and subscribed, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party on payment of the fee therefor, as provided for transcripts in the circuit court.

§ 13. The Board shall prepare and furnish, free of charge, blank forms and provide in its rules for their distribution, so that the same may be readily available, of applications for benefits for compensation from the Workmen's Compensation Fund, notice to employers, proofs of injury or death, or medical attention, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks.

§ 14. All persons, firms and corporations, regularly employing six or more persons for profit for the purpose of carrying on any form of industry hereinafter mentioned, in the State of Kentucky, are employers within the meaning of this Act and are subject to its provisions. All persons in the service of employers, as herein defined, and employed by them for the purpose of carrying on the industries hereinafter mentioned, in which they are engaged (persons casually employed, excepted), are employes within the meaning of this Act and subject to the provisions thereof; Provided, that this Act shall not apply to employers of employes in domestic or agricultural service, to employes of any employer who are employed wholly without the State, nor shall a member of a firm of employers or any officer of a

corporation employer be deemed an employe within the meaning of this Act.

§ 15. The industries which are subject to this Act are classified as follows:

(1) Coal mines, including their tipplers, power, light, heating and ventilating plants, tramways, private tracks and siding and accessory and auxiliary plants, working in or with by-products.

(2) Paint manufactories, oil refineries, oil and gas wells including their pipe lines, storage, power or light plants, tramways, private tracks and sidings, and accessory and auxiliary plants working in or with by-products.

(3) Iron and steel mills, including blast furnaces, smelters, tube works, rolling mills, and their accessory and auxiliary plants, working or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(4) Sheet and tin plate mills, including their accessory and auxiliary plants, working or with by-products, and plants generating power, light or heat, and tramways, private tracks or sidings.

(5) Foundaries, machine shops, firearm factories, tool factories, car building and repairing, structural iron works, and working or with iron or steel, not otherwise specified, when power driven machinery is used, together with their necessary and auxiliary plants working in or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(6) Stamped metal works, can factories, enamel iron works, and workings in or with sheet iron or tin plates, not otherwise specified where power driven machinery is used, together with their accessory and auxiliary plants working in or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(7) Logging—Logging railroads and tramways, saw mills, including their accessory and auxiliary

plants working or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(8) Planing mills, wood pulp, cordage and paper mills, box factories, cooperage plants, furniture factories, woodenware or wood fibre ware manufacturers, vehicle works of every kind, including their accessory and auxiliary plants working or with by-products, and plants generating power, light or heat, and tramways, private tracks and sidings.

(9) Glass houses of all kinds, including manufactures of tableware, bar goods, bottles, tumblers, glass light fixtures, parts, lamps; window and plate glass, potteries of all kinds including tile, brick, terra cotta, fire clay, earthenware, porcelain, china, crockery-ware using automatic machinery together with accessory and auxiliary plants working or with by-products, and plants generating light or heat, and tramways, private tracks and sidings.

(9a) Glass houses of all kinds, including manufactures of tableware, bar goods, bottles, tumblers, gas light fixture parts, lamps, window and plate glass, potteries of all kinds, including tile, brick, terra cotta, fire clay, earthenware porcelain, china and crockeryware, not using automatic machinery, together with accessory and auxiliary plants working in or with by-products and plants generating power, light or heat, and tramways, private tracks and sidings.

(10) Printing plants of all kinds, electrotyping, photo engraving, engraving, lithographing, embossing, book binding, and accessory and auxiliary lines of work and manufacture.

(11) Woolen mills, knitting mills, cotton mills, carpet and rug mills, clothing manufactories of every kind and working in or with textiles not otherwise specified.

(12) Breweries, bottling works, canneries of fruit, vegetables, oils, fish, milk or meat, manufac-

tories of preserves, jellies, ketchup, sauces, relishes, pickles, flour and feed mills, bakeries, confectioneries, drug and extract manufactories, tobacco, cigar, and stogie cigarette manufactories, in which power driven machinery is used.

(13) Slaughter and packing houses, stock yards, soap, tallow, lard and grease manufactories, tanneries, artificial ice, and refrigerating and cold storage plants, creameries, and carbon black factories, in which power driven machinery is used.

(14) Steam laundries, dyeing and cleaning plants, stamping, embossing and working with leather, shoe and harness manufactories, mattresses and bedding factories, upholstering factories, manufacturers of rubber goods, and auxiliary and accessory lines of work and manufactures not otherwise specified.

(15) Steam and other railroads and transportation systems not otherwise specified.

(16) Street and interurban railways, whether propelled by electricity or other power.

(17) Telegraph and telephone plants and systems, electric light and power plants and systems, steam heat and power plants and systems, water works systems, gas works and systems, grain elevators and all lighting, heating or power systems not otherwise specified.

(18) Quarries, stone crushers, gravel pits, mines, other than coal mines, and working with asphalt, cement, stone or other building material not otherwise specified power propelled ferries, sand diggers and other water craft.

(19) Such works, occupations and manufactories specified in the foregoing eighteen classifications as are operated without power-driven machinery.

(20) Match factories, powder mills, fire-works factories, and works in which articles of an explosive nature are mixed or manufactured.

(21) Constructing of tunnels, shafts, bridges, trestles, steeples, towers, grain elevators, tanks, water towers, wind mills, subaqueous works, iron or steel frame structure, or parts of structures, blast furnaces, smoke stacks, cupolas or chimney more than fifty feet high, water works and systems, electric lights and power plants and systems, gas works systems, installation of steam boilers, engines and dynamos, steam railroads, logging railroads, street railways and systems, boat building with scaffolds, floating docks, engineering works, structural work on buildings over three stories in height, not otherwise specified, and drilling of wells.

(22) Construction and installation of sewers, fire escapes, freight or passenger elevators, advertising signs, ornamental work on or in buildings, metal ceilings, plate or window glass, electrical wiring, stairways, buildings which require galvanized iron or tin work, marble, stone or brick work, roof work, slate work, plumbing work, carpenter work, electric work, installing automatic sprinklers, electric or fire alarm systems, heating or ventilating systems, or machinery not otherwise specified, covering steam pipes and boilers, road and street making, street or other grading and structural work not otherwise specified.

(23) Such works or occupations not specified in the foregoing classifications in connection with which employer and employees shall voluntarily apply to the commission for the benefit and protection of this Act. And the board shall have the power, on or before the first day of January and July of each year, to re-classify the industries subject to this Act, or to create additional classifications in accordance with their respective degrees of hazard and determine the risk of different classes and fix the rates or premiums for each class, according to the risk of same, sufficiently large to provide an adequate fund for the compensation provided for in

this Act and to create a surplus sufficiently large to guarantee a workmen's compensation fund from year to year; provided that the rates so fixed shall not exceed the maximum of one dollar and twenty-five cents on each one hundred dollars of the gross annual pay roll of each employer in any class for the first year after this Act takes effect, but the board may increase the rate if deemed necessary on the first day of July or January in any year. But in determining the rate of premium the board shall consider the length of time during which payment to employers or dependents under the Act may be paid; and provided that employes engaged in the same industries shall be placed in the same class. The premium required to be paid by employers shall be based on the gross annual pay roll of each employer in any class. The classification so determined and the rates of premium established, shall be applicable for such year; or portion thereof; and provided further that the purpose of this Act, the pay of any employe employed partly within and partly without the State shall be deemed to be such proportion of the total pay of said employe *at his service* within this State bears to his service outside the same.

✓ § 16. Each employer shall furnish the Board, upon request all the information required by it to carry out the purpose of this Act. The Board or any number thereof, or any person employed by the Board for that purpose shall have the right to examine under oath, any employer or officer, agent or employe thereof.

† § 17. Within thirty days from the organization of the Board, every employer subject to this Act, shall notify the commission of such fact. The Board shall prepare blank reports for the use of and furnish same to employers subject to this Act, and every employer receiving from the commission any blank, or blanks, with directions for filling out and returning same, shall return the same filled out, so as to

answer fully and correctly all pertinent questions there propounded, and if unable to do so, shall give good and sufficient reason for such failure. Answers to such questions shall be verified under oath, and returned to the commission within the period fixed by the commission for such return.

§ 18. Every employer shall furnish the Board upon request all information required by it to carry out the purposes of this Act. In the month of January of each year, every employer subject to the Act, shall prepare and mail to the Board at its main office in the City of Frankfort, Kentucky, a statement containing the following information, viz.: The number of employes employed during the preceding year from January 1st, to December 31st, inclusive; the number of such employes employed at each kind of employment and the aggregate amount of wages paid to such employes, which information shall be furnished on a blank or blanks to be furnished by the Board and it shall be the duty of the Board to furnish such blanks to employers free of charge, upon request therefor. Every employer receiving from the Board any blanks with directions to fill out same shall cause the same to be properly filled out so as to answer fully and correctly all pertinent questions therein propounded and to give all the information therein sought, or if unable to do so, he shall give to the Board, in writing, good and sufficient reasons for such failure. Any employer who shall fail or refuse to furnish to the Board the annual statement herein required, or who shall fail or refuse to furnish such other pertinent information as may be required by the Board, as provided by this section, shall be liable to a penalty of not exceeding five hundred dollars to be collected in a civil action brought against said employer in the name of the State. All such penalties, when collected, shall be paid into the Workmen's Compensation Fund and become a part thereof.

§ 19. The information contained in the annual report provided for in the preceding section, and such other information as may be furnished to the Board by employers, in pursuance of the provisions of any section hereof, shall be for the exclusive use and information of said Board in the discharge of its official duties, and shall not be open to the public; nor be used in any court in the *section* or proceeding, but the information contained in said report may be tabulated and published by the department in statistical form for the use and information of other State Departments and the public. Any person who shall divulge any information secured by him while a member of the Board or an employe thereof in respect to the transactions, property or business of any company, firm, corporation, person, association or co-partnership, to any person other than the members of the Board, shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall thereafter be disqualified from holding any appointment or employment with the Board.

§ 20. The commission shall establish a Workmen's Compensation Fund from the premiums paid thereto by the employers based on the pay rolls of such employers that have paid the premiums applicable to the class to which they belong, and for the benefit of the dependents of such employes, and shall adopt rules and regulations with respect in the collection, maintenance and disbursement of said fund, not in conflict with the provisions of this Act.

§ 21. The Board shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries and the disbursements on account of injuries and deaths of employes thereof and the disbursements for salaries and expenses, and it shall also keep an account of the money received from each individual employer, and the amount disbursed from the Work-

men's Compensation Fund on account of injuries and death of the employes of such employers should any money remain to the credit of any class, at the end of any year, after disbursements on account of deaths of and injuries to employers of that class during such year, such remainder not exceeding ten per cent of the money paid into said fund on account of such class shall be set aside for the creation of a surplus, until the surplus shall be sufficiently large to guarantee a Workmen's Compensation Fund for such class. But claims for the benefits under this Act shall always have priority over the surplus fund.

§ 22. On the first day of July, 1915, and semi-annually thereafter, a readjustment of the rates shall be made for each of the several classes of occupation or industry, which in the judgment of the Board, have developed an average loss ratio in accordance with the experience of the Board in the administration of law, as shown by the accounts kept, as provided herein.

§ 23. The Treasurer of the State shall be the custodian of the Workmen's Compensation Fund, and all disbursements therefrom shall be paid by him upon vouchers furnished the Workmen's Compensation Board, and signed by any two members of the Board, or such vouchers may bear the facsimile signature of the Board members printed thereon and the signature of the Secretary of said Board.

§ 24. The State Treasurer shall give a separate and additional bond, in such amount as may be fixed by the Governor with sureties to be approved by him conditioned on the faithful performance of his duties as custodian of the Workmen's Compensation Fund.

§ 25. The State Treasurer is hereby authorized to deposit any portion of the Workmen's Compensation Fund, not needed for immediate use, in the

same manner and subject to all provisions of law with respect to the deposit of State funds by such Treasurer, and all interest earned by such portion of the Workmen's Compensation Fund as may be deposited by said Treasurer, in pursuance of authority herein given, shall be collected by him and placed to the credit of such fund.

§ 26. The Workmen's Compensation Board shall have the power to invest any surplus or reserve belonging to the Workmen's Compensation Fund, in bonds of the United States, State of Kentucky, or of any county, city, school district or taxing district of the State of Kentucky, at current market prices for such bonds, provided that such purchase be authorized by a resolution adopted by the Board and approved by the Governor.

§ 27. Every employer subject to this Act who shall elect to pay into said Workmen's Compensation Fund and receive the benefit of this Act, shall, on or before the 1st day of January, 1915, and monthly thereafter in advance, and on or before the 10th day of each month beginning March 10th, 1915, pay into said Workmen's Compensation Fund the amount of premiums so paid by each employer, be determined by the classification, rules and rates made and prepared by the Board, and a receipt or certificate, certifying that such payment has been made, shall immediately be mailed to such employer by the Workmen's Compensation Board, which receipt or certificate, attested by the seal of the Board shall be *prima facie* evidence of the payment of such premium.

§ 28. In order to create a fund available on the application of this Act as aforesaid on the first day of January, 1915, the payments for the months of January, February and March, 1915, inclusive shall be made on or before the first day of January, 1915, and be *preliminary* based upon the pay roll of the operations of any three months between July, 1914,

and January, 1915, to be selected by the said Board. If any employer be found to have overpaid for such three months, he may deduct such over payment from the first monthly payment made to the fund. If any employer be found to have underpaid for such three months, he shall pay the deficiency made by him after the end of said three months. Every employer electing to pay into said Workmen's Compensation Fund after January 1, 1915, shall pay into said fund three months in advance the amount of premium to be based preliminarily upon such employers' pay roll for the three months preceding the application; any over payment to be credited on his first monthly payment after the expiration of said three months and any under payment to be made up by him upon his first monthly payment as herein-before provided with respect to employers who elect to pay into said fund on or before January 1st, 1915; and the Board shall make proper rules and regulations to carry this provision into effect and for cases where the employer has had no pay roll preceding his application.

§ 29. It shall be lawful for any employe subject to this Act, including persons under twenty-one years of age to contract with any employer subject to this Act who elects to pay the premiums herein provided to be paid into said Workmen's Compensation Fund, to accept the compensation provided to be paid to injured employes and the dependents of those killed, and to accept the benefits conferred on employes by this Act, in lieu of any cause of action which he might have, if injured, or that his representative might have if he was thereafter killed through the negligence of such employer, or the negligence of his agents, servants, officers or employes, and to waive all causes of action against such employer conferred by the Constitution or Statutes of this State or by the common law for his injury or death, occurring through the negligence

of the employer or his agents and such contract shall be binding upon the employer and upon the employe and upon his heirs, personal representatives and all persons claiming under or through him.

§ 30. Such a contract between an employe and his employer shall be conclusively presumed to have been made in every case where an employer has elected to pay into the Workmen's Compensation Fund, if said employe shall continue to work for said employer thereafter, with notice that the employer has elected to pay into said fund and the posting of printed or typewritten notices in conspicuous places about the employer's place of business at the time of the elections of such employer to pay into the Workmen's Compensation Fund that he has elected to pay into said Workmens' Compensation Fund shall constitute sufficient notice to all such employer's employes then or thereafter employed of the fact that he has made such an election, and the continuance in the service of such employers shall be deemed a waiver by the employe of his rights of action, as aforesaid. Except as provided in Section 32.

§ 31. Any employer subject to this Act, electing to pay into the Workmen's Compensation Fund, the premiums provided for by this Act, shall not be liable to respond in damages at common law or by statute for the injury or death or loss of service of any employe occurring through the negligence of such employer, or his agent, servants, officers, or employes, during any period of time in which such employer shall not be in default in the payment of such premiums. Provided, that the injured employe has remained in his service after notice is posted as provided in Section 31, that his employer has elected to pay into the Workmen's Compensation Fund the premiums provided by this Act. The continuance in the service of such employer or accepting service after such notice shall have been posted, shall be

deemed a waiver by the employe of his rights of action, as aforesaid. Except as in Section 32.

§ 32. Any employe prior to receiving an injury may give notice to an employer who has elected to pay into said fund, that he will not accept the benefits of this Act and waive his right of action as herein provided. Such notice shall be in writing and served on the employer as provided by the Civil Code for the service of notices, and a copy thereof shall be mailed by the employe to the Workmen's Compensation Board. If thereafter such employe shall be injured or killed while employed by such employer who has elected to pay into the said Workmen's Compensation Fund, and an action shall be instituted against such employer to recover damages for the injury or death of such employe, it shall be sufficient defense thereto and shall bar recovery if the injury of said employe was caused by or contributed to by the negligence of any other employe of said employer, or if the injury was due to any of the ordinary hazards, or risks of the employment, or if due to any defect in the tools, machinery, appliances, instrumentality or place of work, if the defect was known or could have been discovered by the injured employe by the exercise of ordinary care on his part, or was not known or could not have been discovered by the employer by the exercise of ordinary care in time to have prevented the injury nor in any event, if the negligence of the injured employe contributed to such injuries. But nothing herein shall deprive such employer of any defense not herein mentioned. If the employer is not in default in payment of premiums and a recovery shall be obtained against him in such action, the said Board shall pay on said judgment not exceeding a sum equal to the amount which the said injured employe or his dependents in case of death, would have been entitled to recover if he had elected to accept the benefit of this Act, and the employer shall re-

ceive credit on said payment for the payment made by the Board. Such employes, at any time, after he has elected not to accept the benefits of this Act and waive his right of action, as in this Act provided, may withdraw such election and come under the provisions of this Act and accept its benefits and waive his right of action as herein provided, by giving written notice to his employer and to the Board; and shall thereafter occupy the same position as if he had originally elected to accept the benefits of this Act and waive his cause of action, provided, that such withdrawal of his election not to accept the benefits of this Act shall not affect claims for damages against his employer on account of injuries theretofore received; nor entitles such injured employe to be paid anything out of the Workmen's Compensation Fund on account of such prior injury.

§ 33. The Commission shall disburse the Workmen's Compensation Fund to such employes within the meaning of this Act of employers as have paid into such fund the premiums for the period in which the injury occurs, applicable to the class to which they belong that shall have received injuries in this State in the course of and resulting from their employment, or to the dependents, if any, of such employes, in case of his death, according to the provisions hereinafter made.

§ 34. All employers subject to this Act who shall elect not to pay into the Workmen's Compensation Fund the premiums provided by this Act, or having elected to pay shall be in default in the payment of same shall be liable to their employes within the meaning of this Act, for damages by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employers, and also to the personal representatives of such employe and in any action by any such employe or personal representative thereof,

such defendant shall not avail himself of the following defenses: The defense of the fellow servant; the defense of the assumption of risk, or the defense of contributory negligence.

§ 35. The commission shall disburse and pay from the fund in addition to any such amounts as they may be entitled thereto under this act, such amounts for medical, nurse and hospital services and medicine as it may deem proper, not, however, in any case to exceed the sum of one hundred dollars in addition to such awards to such employes; payment to be made to the employer to the persons who may have furnished the services and supplies or to the persons who may have advanced payment for the same, as the commission shall deem proper. Provided that in case any injured employe be entitled, to under the contract connected with his employment, or otherwise, to hospital or medical services without further charge to him, no payment shall be made out of the Workmen's Compensation Fund for hospital or medical services.

§ 36. Notwithstanding anything hereinbefore or hereafter contained, no employe or dependent of any employe shall be entitled to receive any sum from the Workmen's Compensation Fund on account of any injury to or death of an employe caused by a self-inflicted injury, wilful misconduct or intoxication of such employe. If injury or death results to an employe through the deliberate intention of his employer to produce such injury or death, the employe, the widow, widower, children or dependents of the employe shall have the privilege to take under this Act, or in lieu thereof, to have a cause of action against the employer as if this Act had not been enacted for such damages as may be sustained by such employe, his personal representative or dependent.

Provided, that if a suit is brought under this section, the right to participate in said Workmen's

Compensation Fund on account of such injury, shall be waived and void as to all persons, and if a claim is made for compensation from said Workmen's Compensation Fund, all rights to sue the employer for damages for such injury shall be waived and void.

§ 37. In case death ensues from the injury received reasonable funeral expenses, not to exceed seventy-five dollars, shall be paid from the fund to the personal representative, to the employe, or to such other person as shall have advanced the same, in addition to such award to the employe's dependents.

§ 38. No benefit shall be allowed for one week after injury is received, except the disbursements provided for in Section 35.

§ 39. In case of temporary total disability the employe shall receive fifty per cent of his average weekly wages, so long as such disability is total, not to exceed a maximum of twelve dollars a week, and not less than a minimum of five dollars a week, unless the employe's weekly wages shall be less than five dollars a week, in which event, he shall receive compensation equal to his full wages, but in no case to continue for more than six years from the date of the injury, or to exceed three thousand, seven hundred and fifty dollars.

§ 40. In case of injury resulting in partial disability the employe shall receive fifty per cent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars a week or an aggregate sum of more than three thousand seven hundred and fifty dollars. In cases including the following schedule, the disability in each case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be as specified herein, to-wit:

For the loss of a thumb, fifty per cent of the average weekly wages during sixty weeks.

For the loss of a first finger, commonly called the index finger, fifty per cent of the average weekly wages during thirty-five weeks.

For the loss of a second finger, fifty per cent of the average wages during thirty weeks.

For the loss of a fourth finger, commonly known as the little finger, fifty per cent of the average weekly wages during fifteen weeks.

The loss of the second, or distal phalange, or the thumb, shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third, or distal phalange, of any finger, shall be considered to be equal to the loss of one-third of such finger.

The loss of the middle, or second phalange, of any finger shall be considered to be equal to the loss of two-thirds of such finger.

The loss of more than the middle and distal phalanges of any finger shall be considered to be equal to the loss of the whole finger; provided, however, that in no case will the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a metacarpal bone (bone of palm) for the corresponding thumb, finger, or fingers above, add ten weeks to the number of weeks as above.

For ankylosis (total stiffness of) or contractures (due to sears or injuries) which makes the fingers more than useless, the same number of weeks apply to such finger or fingers (not thumb) as given above.

For the loss of a hand fifty per cent of the average weekly wages during one hundred and fifty weeks.

For the loss of an arm, fifty per cent of the average weekly wages during two hundred weeks.

For the loss of one of the toes, other than the great toe, fifty per cent of the average weekly wages during ten weeks.

For the loss of the great toe, fifty per cent of the average weekly wages during thirty weeks.

The loss of more than two-thirds of any toe shall be considered equal to the loss of the whole toe.

The loss of less than two-thirds, of any toe shall be considered equal to the loss of one-half toe.

For the loss of a foot, fifty per cent of the average weekly wages during one hundred and twenty-five weeks.

For the loss of a leg, fifty per cent of the average weekly wages during two hundred weeks.

For loss of an eye, fifty per cent of the average weekly wages during one hundred weeks.

The amounts specified in this clause are all subject to the limitations as to the maximum weekly amount payable as hereinbefore specified in this action.

For the loss of a third finger, fifty per cent of average weekly wages during twenty weeks.

§ 41. In case of permanent total disability the award shall be fifty per cent of the average weekly wages and shall continue until the death of such person so totally disabled, but not to exceed a maximum of twelve dollars per week and not less than a minimum of five dollars per week, at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages.

The loss of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, shall prima facie substitute total and permanent disability to be compensated according to the provisions of this section.

§ 42. In case the injury causes death within the period of two years, the benefits shall be in the amount and to the persons following:

Sub-sec. 1. If there are no dependents the disbursements from the Workmen's Compensation Fund shall be limited to the expense provided for in Sections 35 and 37. And the said Board shall have the sole right of action to recover from an employer who has elected to pay into said fund who is not in default in the payment of premiums for the death of an employe leaving no dependent caused by negligence of such employer or his employes or agents.

Sub-sec. 2. If there are wholly dependent persons at the time of death, the payment shall be fifty per cent of the average weekly wages and to continue for the remainder of the period between the date of death and six years after the date of the injury and not to exceed the maximum of three thousand seven hundred and fifty dollars nor less than the minimum of one thousand five hundred dollars.

Sub-sec. 3. If there are partly dependent persons at the time of death, the payment shall be fifty per cent of the average weekly wages and to continue for all or such portion of the period of six years after the date of injury, as the Board in such case may determine, and not to amount to more than a maximum of three thousand seven hundred and fifty dollars (\$3,750.00).

Sub-sec. 4. The following persons shall be presumed to be wholly dependent for support on a deceased employe: (a) A wife upon a husband with whom she lives at the time of his death; (b) A child, or children under the age of sixteen years (or over sixteen years, physically or mentally incapacitated from earning) upon the parent with whom she is living at the time of the death of such parent. In all other cases the question of dependency in whole or in part shall be determined in accordance with

the facts in each particular case of such employe but no persons shall be considered as a dependent unless a member of the family of the deceased employe, or bears to him the relation of widower or widow, lineal descendants, ancestor or brother or sister. The word "child" as used in this act, shall include a posthumous child, and a child legally adopted prior to the injury.

§ 43. The benefits in case of death shall be paid to such one or more of the dependents of the deceased for the benefit of all the dependents as may be determined by the Board, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the Board deems it proper, and shall operate to discharge all other claims therefor. The dependent or person to whom benefits are paid, shall apply the same to the use of the several beneficiaries thereof, according to their respective claims upon the decedent for support in compliance with the finding and direction of the Board.

In all cases of death where the dependents are a widow and one or more minor children, it shall be sufficient for the widow to make application to the Board on behalf of herself and minor children and in cases where all of the dependents are minors, the application shall be made by guardian of such minor dependent or dependents. The persons and classes of persons by this act specified shall be deemed to be the sole dependents of such employes and no other person, or class of persons shall receive any benefit from the fund hereby credited. And should any employe leave surviving him no such dependent, the amount that would be due and payable to his dependents, had any survived him, shall be paid, or credited to the Workmen's Compensation Fund, to the credit of the class to which such employe belonged.

§ 44. The average weekly wages of the injured person at the time of the injury, shall be taken as the basis upon which to compute benefits.

§ 45. Whenever the Board shall find that an employe has been injured without fault on his part while in the course of his employment, through the negligence of the employer in the failure to discharge a non-delegable duty, the Board may require such employer to pay an additional premium into said Workmen's Compensation Fund equal to an amount not exceeding ten per cent of the sum awarded by the Board to such injured employe or his dependents. Said premium shall be paid within thirty days after the order is made. Before making an order to pay such additional premium, the Board shall give ten days' notice in writing, to the employer, to show cause against the order.

§ 46. Whenever the Board shall find that an employe has received an injury in the course of his employment, through the fault of his employer in failing to comply with any Statute for the protection of employes, the Board shall fix a day on which the employer may appear before the Board and show any cause he may have against said finding, or against the Board awarding the additional sum herein provided, ten days' notice in writing, shall be given the employer of the time and place of said hearing. If no sufficient cause is shown by the employer against the finding of the Board, it shall enter an order to that effect and the employer shall, within ninety days, pay into and for the benefit of the Workmen's Compensation Fund a sum to be fixed by the Board in its order not to exceed an amount equal to twenty-five per cent of the amount awarded to the said injured employe, or his dependents, under sections 39 to 42 of this Act. Said payment shall be made by the employer in a lump sum.

§ 47. In case any minor employe who is illegally employed shall be injured or killed, in the course of

his employment, his statutory guardian or his representative, if the infant is killed, may claim compensation under the terms of this Act or sue as though this Act had not been passed. In the event claim is made for the injury or death of such infant or compensation from said Workmens' Compensation Fund, the Board shall in addition to the sum awarded and payable from the Workmen's Compensation Fund award an equal amount against the employer of said infant not to exceed the sum of two thousand dollars. The amount awarded against him shall be paid by the Board to the said infant or to his guardian, or representative if the infant is killed in installment, or in a lump sum as the Board may determine as provided for the payment of awards from said Workmen's Compensation Fund. Before any order is made requiring an employe to pay any sum to the guardian or the representative of such infant, under this section of the claim, to compensation under this section, notice of the time and place of the hearing of said claim by the Board, shall be given to the employer and the employer shall have the right to be heard and to introduce evidence on the question of his liability.

Provided, that a claim made to compensation from said Workmen's Compensation Fund by the guardian of the infant or his personal representative, if the infant is killed, shall be a waiver and bar of all rights of action on account of said injury to said infant, and the institution of an action by the guardian or representative of the infant, shall be a waiver of the right to compensation from said Workmen's Compensation Fund.

§ 48. Should a further accident occur to an employe receiving periodical payments under this Act, for a temporary disability, or who has been previously the recipient of a lump sum payment under this Act, his future compensation shall be adjusted according to the other provisions of this Act with

reference to the combined effect of his injuries and his past receipt of money, under this Act.

§ 49. The powers and jurisdiction of the Board, over each and every case shall be continuing, and it may from time make such modifications or changes with respect to former findings or orders with respect thereto, as its opinion, may be justified.

§ 50. The Board, under special circumstances and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

§ 51. Compensation before payment shall be exempt from all claims of creditors and from any attachments, executions or lien, and shall be paid only to such persons as shall be entitled to take under this Act, and any assignment of such claim shall be void.

§ 52. The Board shall have full power and authority to hear and determine all questions within its jurisdiction and its decision thereon shall be final. Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the complainant's right, then the claimant, within thirty days after notice of the final action of the Board, may file a petition against the Board in the circuit court of the county wherein the injury was inflicted, asserting his rights therein, to participate in said fund. In such action, the Commonwealth's Attorney and the County Attorney, in the circuit court, and the Attorney General in the Court of Appeals, if the case is appealed, shall represent the Workmens' Compensation Board. Said action shall proceed as ordinary actions in the Circuit Court, and if the court shall find and adjudge that the plaintiff is entitled to participate in such fund, the Board shall fix his compensation within the limits and under the rules prescribed in this Act. Such action shall have

the same precedence on the trial dockets of the circuit court and the Court of Appeals, as election contest cases now have.

§ 53. The Workmen's Compensation Board shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure other than as herein provided; but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this Act.

§ 54. A minor legally employed shall be deemed *sui juris* for the purpose of this Act, and no other person shall have any cause of action or right to compensation for an injury to such minor workmen or loss of service on account thereof, but in the event of the award of a lump sum of compensation to such minor employe, such sum shall be paid only to the legally appointed guardian of such minor.

§ 55. No agreement by an employe to waive his rights to compensation under this Act shall be valid. No agreement by an employe to pay any portion of the premium paid by his employer into the workmen's compensation fund shall be valid, and any employer who deducts any portion of such premium from the wages or salary of any employe entitled to the benefits of this Act shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars for each such offense.

§ 56. Any employe claiming the right to receive compensation under this Act may be required by the Board or its chief medical examiner, to submit himself for medical examination at any time and from time to time at a place reasonably convenient for such employe, and as may be provided by the rules of the Board. If such employe refuse to submit to any such examination or obstruct the same, his right to have his claim for compensation con-

sidered, if his claim be pending before the Board, or to receive any payments for compensation theretofore granted, shall be suspended during the period of such refusal or obstruction.

§ 57. All books, records and pay rolls of the employers of the State, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the Board *or* any of its traveling auditors, inspectors, or assistants, for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed and such other pertinent information as may be necessary for the uses and purposes of the Board in its administration of the law. Refusal on the part of any employer to submit his books, records and pay rolls for the inspection of any member of the Board or traveling auditor, inspector or assistant presenting written authority from the Board, shall subject such employers to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the State, and paid into the Workmens' Compensation Fund to become a part thereof.

§ 58. Any employer who fraudulently misrepresents to the Board the amount of pay roll upon which the premium under this Act is based, shall be liable to the State in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability of the *Board* under this section shall be enforced in a civil action by the Board and all sums collected under this section shall be paid into the Workmen's Compensation Fund.

§ 59. The provisions of this Act shall apply to employers and their employes engaged in intrastate and also in interstate and foreign commerce for whom a rule or liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with the intrastate work

may and shall be clearly separable and distinguishable from interstate or foreign commerce, and then only when such employer and any of his workmen working only in this State, with the approval of the Board and as far as not forbidden by any Act of Congress, voluntarily accept the provisions of this Act by filing written acceptances, which, when filed with and approved by the Board, shall subject the acceptors irrevocably to the provisions of this Act to all intents and purposes and if they had been originally included in its terms, during the period or periods for which the premiums herein provided have been paid. Payment of premiums shall be on the basis of the pay roll of the workmen who accept, as aforesaid.

§ 60. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employes in the course of their employment. Within a week after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing to the Workmen's Compensation Board upon blanks to be procured from the Board for that purpose. Such report shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employe, and shall state the time, the nature and cause of injury and such other pertinent information as may be required by the Board. Any employer who refuses or neglects to make any report required by this section, shall be punished by a fine of not more than five hundred dollars for each offense. An injured employe, if he is able so to do, and the attending physician, whether the injury results in the death of such employe or not, and within one week from the time of such injury or death, shall give written notice to the employer and the Board of such injury, stating the nature and extent thereof, the time and place of its occurrence, the name, address, and

occupation of such injured employe, and the names and addresses of the person present at the time of the injury, so far as such names and addresses are known, or can be obtained. Any employes or physician failing or refusing to make report as by this section required, shall be punished by a fine not exceeding twenty-five dollars. And the Board may in its discretion, if such injured employe, or his dependents are subsequently found to be entitled to any payments out of the compensation fund, deduct any amount, not exceeding said sum of twenty-five dollars from the benefits payable hereunder, or from the amount that might otherwise be paid to said attending physician, should such physician fail to make such report.

§ 61. Upon the request of the Board, the Attorney General, or under his direction, the County or Commonwealth Attorney of any county, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this Act, or for the recovery of any money due the Workmen's Compensation Fund, or any penalty herein provided for, arising within the county in which he was elected and shall defend in like manner all suits, actions or proceedings brought against the Board or the members thereof in their official capacity.

§ 62. All judgments *contained* in any action prosecuted by the Board under the authority of this Act, shall have the same preference against the assets of the employer as it now or may be hereafter allowed by law on judgments rendered for claims for taxes.

§ 63. If any employer shall default in any payment required to be made by him to the Workmen's Compensation Fund, the amount due by him shall be collected by civil action against him in the name of the Board as plaintiff. Such actions may be brought either in the Franklin Circuit Court or in

the Circuit Court in the county in which the defendant resides or has his principal place of business.

§ 64. Annually on or before the 15th day of December such Board shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made by it, a general statement of the cause of accident leading to the injuries for which the awards were made and detailed statement of the disbursements from the expense fund and the condition of its respective funds, together with any other information which the Board deems proper to call to the attention of the Governor, including any recommendations it may have to make, and it shall be the duty of the Board from time to time to publish and distribute among employers and employes such general information as to the business transacted by the department as in its judgment may be useful.

§ 65. The Board shall cause to be printed in proper form for distribution to the public, its classifications, rates, regulations and rules of procedure, and shall furnish the same to any person upon application therefor, and the fact that such classifications, rates, rules, regulations and rules of procedure are printed ready for distribution to all who may apply for same, shall be sufficient publication of the same, as required by this Act.

§ 66. If any employer shall be adjudged to be outside the lawful scope of this Act, the Act shall not apply to him or his employes; or if the employe shall be adjudicated to be outside the lawful scope of this Act, because of the remoteness of his work from the hazard of his employer's work, such adjudication shall not impair the validity of this Act in other respects, and every such case *as accounting*, according with the justice of the case, shall be had of the moneys received. If the provisions of this Act for the creation of the fund or the provision of the Act authorizing employes to waive causes of action

against employers for injuries received in the course of their employment and making the compensation to the employes and their beneficiaries provided in this Act exclusive of any other remedy on the part of the employe, shall be held invalid, the entire Act shall thereby be invalidated and an accounting according to the justice of the case shall be had of money received. In other respects an adjudication of the invalidity of any part of this Act shall not effect the validity of this Act as a whole or any part thereof.

§ 67. If a single establishment or works comprises several occupations listed in Section 15 in different risk classes the premiums shall be computed according to the pay roll of each occupation if the occupations are clearly separable; otherwise an average rate of premium shall be charged for the entire establishment taking into consideration the number of employes and the relative hazards of the employes in the several occupations.

§ 68. If the employe of an employer who has elected to accept the provisions of this Act, is injured by the negligence or wrong of another person not in the same employment the injured employe, or if death resulted from the injury, his dependents, as the case may be, shall elect whether to take under act or seek a remedy against such other persons, such election to be in advance of instituting any suit; and, if he take under this act, the cause of action against such other person shall be and is hereby assigned to the Board for the benefit of the compensation fund; if the other choice is made, the compensation fund shall contribute only the deficiency, if any, between the amount of the recovery against such third person actually collected and the amount of compensation provided by this Act for such case.

If such injury is due to the joint negligence of his employer and any other person not in the same em-

ployment, and the injured employe, or in case of death resulting from the injury, his dependents as the case may be shall have elected to take compensation under this Act, the causes of action against the other joint tort feasor shall be and is hereby assigned to the Board for the benefit of the compensation fund.

Any cause of action, so assigned to the Board, may be prosecuted or compromised, in the discretion of the Board. Any compromise by the injured employe or his dependent, in the case of death, of any such suit, which would leave a deficiency to be made good out of the compensation fund, shall be made only with the written approval of the Board.

§ 69. This Act shall not effect any *Section* pending or cause of action existing on the 31st day of December, 1914.

§ 70. Notwithstanding anything in this Act, any employer filing notice with the Workmen's Compensation Board, of his intention so to do, and upon furnishing satisfactory proof to said Board of his solvency and financial ability to pay the compensation and benefits herein before provided, may make said payments direct to his employes as they may be entitled to receive same under the terms and conditions of this Act, and any employer electing to administer the compensation fund direct to his employes shall have the benefit of all the provisions of this Act as though said fund were paid into and administered by said Board.

§ 71. Nothing in this Act shall prevent any employer carrying his own risk from insuring his liability in any liability company authorized to do business in the State, provided the amounts to be paid are not less than that provided in this Act.

§ 72. In case any employer carrying his own risk cannot agree with an employe on the payments as provided for in this Act, such employe shall have the right to submit his claim in writing within sixty

days to the Workmen's Compensation Board, and it shall be the duty of the Board to delegate one of its members to investigate said claim and endeavor under the provisions of this Act to reach a satisfactory settlement of the claim. In event the final action of the member of the Board denies the right of the claimant to participate in the fund as provided in Section 52, then the claimant may proceed as provided in Section 52, and compensation, if awarded the claimant, shall be fixed as provided in Section 52, and in the event the employer feels that the award should not have been granted, he shall have the right of appeal to the circuit court and from the circuit court as in other cases.

§ 73. The application of this Act, as between employers and employe, shall date from and include the first day of January, 1915.

§ 74. Every employer subject to this Act who shall on or before November 1, 1914, elect not to pay into said Workmen's Compensation Fund and receive the benefits, hereof, shall on or before the first day of November, 1914, so notify the Board in writing, and any such employer not so notifying the Board shall on or before January 1st, 1915, pay into the fund the premiums as provided in Section 27, hereof. Employers who elect to accept the benefits hereof, and pay into said Workmen's Compensation Fund, may at the time fixed for making any such payment, withdraw from the benefits hereof, and thereafter be relieved from further payments, but notice of such withdrawal shall be served on the Board and posted by written or printed notices in at least three conspicuous places about his plant. Such employer, may, however, at any time thereafter again elect to come under the provisions hereof by making payment of premium and posting notices as originally required. If any employes of an employer not entitled to the benefits hereof, or the dependents of such employe in case of his death,

shall make application to the Board for benefits hereunder, it shall be the duty of the Board to at once notify such employe, or his dependents of the fact that such employer is not entitled to the benefits of this Act.

§ 75. Applications for benefits, hereunder, shall be made by the injured employe or his dependents, within one year from the time of the injury, and if not so made within said time, shall thereafter be barred and not allowed by the Board.

Members of "The Workmen's Compensation Board" shall be considered as officers, and shall take the oath prescribed by the Constitution and laws of Kentucky, and shall give bond for the faithful performance of their duties, which bonds shall be approved by the Governor and kept on file in the office of the Secretary of State, and any action on said bonds for breach thereof, shall be instituted by special counsel employed by the Governor and shall be in the name of the Commonwealth.

Approved March 21, 1914.

Gaylord Bros.
Makers
Syracuse, N. Y.
PAT. JAN. 21. 1908

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